

No. 24-50826

**In the United States Court
For the Fifth Circuit**

LA UNIÓN DEL PUEBLO ENTERO, *ET AL.*,
Plaintiffs-Appellees,

v.

GREGORY W. ABBOTT, *ET AL.*,
Defendants-Appellants,

**On Appeal from the United States District Court
for the Western District of Texas, San Antonio Division**

**OPPOSITION OF PLAINTIFFS THE ARC OF TEXAS
AND DELTA SIGMA THETA SORORITY, INC.
TO APPELLANTS' MOTION TO STAY DISTRICT
COURT ORDER AND PERMANENT INJUNCTION
PENDING APPEAL**

Victor Genecin
Brianna Della Williams
Uruj Sheikh
NAACP Legal Defense and
Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006
Telephone: (212) 965-2200
Facsimile: (212) 226-7592
vgenecin@naacpldf.org

Shira Wakschlag
Evan Monod
The Arc of the United States, Inc.
2000 Pennsylvania Ave. NW, Suite 500
Washington, DC 20006
Telephone: (202) 534-3708
Facsimile: (202) 534-3731
Wakschlag@thearc.org
Monod@thearc.org

J. Michael Showalter
Derek Ha
ARENTFOX SCHIFF LLP
233 South Wacker Drive, Suite 7100
Chicago, IL 60606
Tel: (312) 258-5561
j.michael.showalter@afslaw.com
derek.ha@afslaw.com

*Counsel for Plaintiffs Houston Area
Urban League; Delta Sigma Theta
Sorority, Inc.; The Arc of Texas; and
Jeffrey Lamar Clemmons*

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CERTIFICATE OF INTERESTED PERSONS

LA UNIÓN DEL PUEBLO ENTERO, *ET AL.*,
Plaintiffs-Appellees,

v.

GREGORY W. ABBOTT, *ET AL.*,
Defendants-Appellants,

The undersigned counsel of record certifies that the following listed persons and entities (other than governmental parties) as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so the judges of this Court may evaluate possible disqualification or recusal:

La Union del Pueblo Entero

Southwest Voter Registration Education Project

Mexican American Bar Association of Texas

Texas Hispanics Organized for Political Education

JOLT Action

William C. Velasquez Institute

Fiel Houston, Incorporated

Friendship-West Baptist Church

Texas Impact

James Lewin

OCA-Greater Houston

League of Women Voters of Texas

LULAC Texas

Texas Alliance for Retired Americans

Texas AFT

Voto Latino

Delta Sigma Theta Sorority, Incorporated

The Arc of Texas

Republican National Committee

Harris County Republican Party

Dallas County Republican Party

National Republican Senatorial Committee

National Republican Congressional Committee

Houston Area Urban League

Mi Familia Vota

Marla Lopez

Marlon Lopez

Paul Rutledge

REVUP-Texas

Nina Perales

Email: nperales@maldeforg

Mexican-American Legal Defense & Educational Fund

110 Broadway Street

San Antonio, TX 78205

Jason Scott Kanterman

Direct: 212-859-8519

Email: jason.kanterman@friedfrank.com

Fried, Frank, Harris, Shriver & Jacobson, L.L.P.
1 New York Plaza
New York, NY 10004

Elizabeth Ryan
Direct: 214-746-8158
Email: liz.ryan@weil.com
Fax: 214-746-7777
Weil, Gotshal & Manges, L.L.P.
Suite 300
200 Crescent Court
Dallas, TX 75201

Leah Tulin
Direct: 202-650-6397
Email: tulini@brennan.law.nyu.edu
Brennan Center for Justice at NYU School of Law
Suite 1150
1140 Connecticut Avenue, N.W.
Washington, DC 20036

Zachary Tripp
Direct: 202-682-7000
Email: zack.tripp@weil.com
Fax: 202-857-0940
Weil, Gotshal & Manges, L.L.P.
Suite 600
2001 M Street, N.W.
Washington, DC 20036

Aaron J. Curtis
Direct: 212-310-8901
Email: aaron.curtis@weil.com
Weil, Gotshal & Manges, L.L.P.
767 5th Avenue
New York, NY 10153-0119

Sean Morales-Doyle
Direct: 646-292-8363
Email: Morales-doyles@brennan.law.nyu.edu
Brennan Center for Justice
Suite 1750
120 Broadway
New York, NY 10271

Jessica Ring Amunson
Direct: 202-639-6023
Email: jamunson@jenner.com
Fax: 202-661-4993
Jenner & Block, L.L.P.
Suite 900
1099 New York Avenue, N.W.
Washington, DC 20001-4412

Thomas Paul Buser-Clancy
Direct: 713-942-8146
Email: tbuser-clancy@aclutx.org
American Civil Liberties Union of Texas
P.O. Box 8306
Houston, TX 77288

Dayton Campbell-Harris
Direct: 425-516-8400
Email: dcampbell-harris@aclu.org
American Civil Liberties Union Foundation
Voting Rights Project
125 Broad Street
New York, NY 10004

Adriel I. Cepeda Derieux
Direct: 212-284-7334
Email: acepedaderieux@aclu.org
Fax: 212-549-2654
American Civil Liberties Union Foundation
915 15th Street, N.W.
Washington, DC 20005

Sarah Xiyi Chen
Direct: 512-474-5073
Email: schen@texascivilrightsproject.org
Texas Civil Rights Project
1405 Montopolis Drive
Austin, TX 78741-3438

Zachary Dolling
Direct: 512-474-5073
Email: zachary@texascivilrightsproject.org
Texas Civil Rights Project
1405 Montopolis Drive
Austin, TX 78741-3438

Ashley Alcantara Harris
Direct: 713-942-8146
Email: aharris@aclutx.org
American Civil Liberties Union of Texas
P.O. Box 8306
Houston, TX 77288

Savannah Kumar
Direct: 713-942-8146
Email: skumar@aclutx.org
American Civil Liberties Union of Texas
Suite 350
5225 Katy Freeway
Houston, TX 77007

Peter Hofer
Disability Rights Texas
2222 W. Braker Ln.
Austin, TX 78758
(512) 454-4816
512/454-3999 (fax)
phofer@disabilityrightstx.org

Sophia Lin Lakin
Direct: 212-519-7836
Email: slakin@aclu.org
Fax: 212-549-2654
American Civil Liberties Union Foundation
Voting Rights Project
18th Floor
125 Broad Street
New York, NY 10004

Christopher McGreal
Direct: 214-630-0916
Email: cmcgreal@disabilityrightstx.org
Disability Rights Texas
North Texas Regional Office
Suite 450
1420 W. Mockingbird Lane
Dallas, TX 75247-4932

Adriana Cecilia Pinon
Direct: 713-942-8146

Email: apinon@aclutx.org
American Civil Liberties Union of Texas
P.O. Box 8306
Houston, TX 77288

Lucia Romano
Disability Rights Texas
1500 McGowen - Ste 100
Houston, TX 77004
(713) 974-7691
713/974-7695 (fax)
lromano@drtx.org

Edgar Saldivar
Direct: 713-942-8146
Email: ESaldivar@aclutx.org
American Civil Liberties Union of Texas
Suite 350
5225 Katy Freeway
Houston, TX 77007

Ari J. Savitzky
Direct: 212-549-2681
Email: asavitzky@aclu.org
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004-2406

Christopher D. Dodge
Direct: 202-987-4928
Email: cdodge@elias.law
Elias Law Group, L.L.P.
Suite 400
250 Massachusetts Avenue, N.W.
Washington, DC 20001

Marcos Mocine-McQueen
Direct: 202-968-4492
Email: mmcqueen@elias.law
Elias Law Group, L.L.P.
Suite 400
250 Massachusetts Avenue, N.W.
Washington, DC 20001

Uzoma Nkem Nkwonta

Direct: 202-968-4490
Email: unkwonta@elias.law
Elias Law Group, L.L.P.
Suite 400
250 Massachusetts Avenue, N.W.
Washington, DC 20001

Jennifer A. Holmes
Direct: 202-682-1300
Email: jholmes@naacpldf.org
NAACP Legal Defense & Educational Fund, Incorporated
Suite 600
700 14th Street, N.W.
Washington, DC 20005

J. Michael Showalter
Direct: 312-258-5561
Email: j.michael.showalter@afslaw.com
ArentFox Schiff LLP
Suite 7100
233 S. Wacker Drive
Willis Tower
Chicago, IL 60606

Mohammed A. Badat
NAACP Legal Defense & Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006
(212) 965-2200
(212) 226-7592 (fax)
abadat@naacpldf.org

Eitan G. Berkowitz
ArentFox Schiff LLP
44 Montgomery Street, 38th Floor
San Francisco, CA 94104
408-334-8775
eitan.berkowitz@afslaw.com

Kenneth E. Broughton, Jr.
Reed Smith LLP
2850 N. Harwood St., Suite 1500
Dallas, TX 75201
713-469-3819
713-469-3899 (fax)

kbroughton@reedsmith.com

James David Cromley
ArentFox Schiff LLP
233 S Wacker Drive, Suite 7100
Chicago, IL 60606
312-258-5616
312-258-5600 (fax)
james.cromley@afslaw.com

Victor Genecin
NAACP Legal Defense & Educational Fund, Inc.
40 Rector Street, Fifth Floor
New York, NY 10006
(212) 965-2200
(212) 226-7592 (fax)
vgenecin@naacpldforg

Derek H. Ha
ArentFox Schiff LLP
44 Montgomery Street
38th Floor
San Francisco, CA 94104
415-757-5897
derek.ha@afslaw.com

Ann Helen MacDonald
ArentFox Schiff LLP
233 S. Wacker Dr., Ste 7100
Chicago, IL 60606 312-258-5548
ann.macdonald@afslaw.com

Roswill Mejia
Reed Smith LLP
401 Congress Avenue
Suite 1800
Austin, TX 78701
United States
512-409-2718
512-623-1802 (fax)
rmejia@reedsmith.com

Keely Dulaney Pippin
Reed Smith/Houston
1221 McKinney Street

Suite 2100
Houston, TX 77010
713-469-3888
713-469-3899 (fax)
kpippin@reedsmith.com

Kathryn Sadasivan
NAACP Legal Defense & Educational Fund, Inc.
40 Rector Street, Fifth Floor
New York, NY 10006
(212) 965-2200
(212) 226-7592 (fax)
ksadasivan@naacpldf.org

Uruj Sheikh
NAACP Legal Defense and Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006
212-965-2275
usheikh@naacpldf.org

Maia Cole
NAACP Legal Defense and Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006
212-965-2200
mcole@naacpldf.org

Ciara A. Sisco
NAACP Legal Defense & Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006
(212) 965-2200
(212) 226-7592 (fax)
csisco@naacpldf.org

Sarah C. Stewart
Reed Smith, LLP
2850 N. Harwood Street, Suite 1500
Dallas, TX 75201
469-680-4228
469-680-4299 (fax)
sarah.stewart@reedsmith.com

Shira Wakschlag
The Arc of the United States
2000 Pennsylvania Ave. NW, Suite 500
Washington, DC 20006
(202) 534-3708
(202) 534-3731 (fax)
wakschlag@thearc.org

Evan Monod
The Arc of the United States
2000 Pennsylvania Ave. NW, Suite 500
Washington, DC 20006
(202) 534-3708
(202) 534-3731 (fax)
monod@thearc.org

Breanna Della Williams
NAACP Legal Defense & Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006
405-602-4779
bwilliams@naacpldf.org

Mark L. Bieter
Stoel Rives LLP
101 S. Capitol Blvd., Suite 1900
Boise, ID 83702
(208) 389-9000
(208) 389-9040 (fax)
mark.bieter@stoel.com

John Bonifaz
Free Speech For People
1320 Centre. St. #405
Newton, MA 02459
(617) 244-0234
(512) 628-0142 (fax)
jbbonifaz@freespeechforpeople.org

Ben Clements
Free Speech For People
1320 Centre. St. #405
Newton, MA 02459
(617) 244-0234

(512) 628-0142 (fax)
bclements@freespeechforpeople.org

Courtney M. Hostetler
Free Speech For People
1320 Centre. St. #405
Newton, MA 02459
(617) 249-3015
(512) 628-0142 (fax)
chostetler@freespeechforpeople.org

Sean Michael Lyons
Lyons & Lyons, PC
237 W Travis St
Ste 100
San Antonio, TX 78205
2102255251
2102256545 (fax)
sean@lyonsandlyons.com

Amira Marcella Mattar
Free Speech For People
48 N. Pleasant Street, #304 A
Amherst, MA 01002
617-564-0464
amira@freespeechforpeople.org

Wendy J. Olson
Stoel Rives LLP
101 S. Capitol Blvd
Suite 1900
Boise, ID 83702
208-389-9000
208-389-9040 (fax)
wendy.olson@stoel.com

Bradley R. Prowant
Stoel Rives LLP
33 S. Sixth Street, Suite 4200
Minneapolis, MN 55402-3722
(612) 373-8800
(612) 373-8881 (fax)
bradley.prowant@stoel.com

Laura E. Rosenbaum

Stoel Rives LLP
760 S.W. 9th Avenue, Suite 3000
Portland, OR 97205
(503) 294-9642
(503) 220-2480 (fax)
laura.rosenbaum@stoel.com

John Matthew Gore
Direct: 202-879-3930
Email: jmgore@jonesday.com
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001

Louis Joseph Capozzi, III, Esq.
Direct: 717-802-2077
Email: lcapozzi@jonesday.com
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001

/s/ J. Michael Showalter
J. MICHAEL SHOWALTER
Counsel for DST and the Arc of Texas

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INTRODUCTION

Every election, tens of thousands of Texas voters with disabilities or limited English literacy require assistance to vote from a person of their choice. Every election Plaintiff-Appellees The Arc of Texas (“The Arc”) and Delta Sigma Theta Sorority, Inc. (“DST”) respond to requests from such voters. The motion of State Defendants and Intervenor-Defendants (collectively, “Appellants”) to limit this assistance unnecessarily while the appeal is pending fails.

Texas’s 2021 election law, S.B.1, requires assistors to make and swear to burdensome disclosures before helping voters, or face criminal penalties. The District Court granted a narrow injunction to enforce Section 208 of the Voting Rights Act—a four-decade old federal law that entitles certain voters to “assistance by a person of the *voter’s choice*.” 52 U.S.C. § 10508 (emphasis added). Nothing in Section 208 allows Texas to limit that choice. *See OCA-Greater Houston v. Texas*, 867 F.3d 604, 614-15 (5th Cir. 2017) (enjoining Texas law requiring Section-208 assistors to be registered voters). The District Court’s injunction removes the real fear of future prosecution from a voter’s chosen assistors—including family, friends, caregivers, or other volunteers, and fulfills Congress’s goal of remedying Texas’ history of denying assistance to disabled and low-literacy voters based on alleged concerns about fraud. *See S. Rep. No. 97-417*, at 62-64 (citing *Garza v. Smith*, 320 F. Supp. 131 (W.D. Tex. 1970)). The injunction implicates no election

administration concerns and imposes no hardship on Appellants. A stay, however, would profoundly harm vulnerable Texas voters in defiance of federal law.

This Court should deny Defendant’s Motion to Stay to ensure that disabled voters and those with limited literacy skills may receive assistance without their assistors fearing prosecution.

BACKGROUND

In September 2021, Texas enacted a sweeping election law known as Senate Bill 1 (“S.B.1.”). Among S.B.1’s many changes to the Texas Election Code, Sections 6.03, 6.05, and 6.07 added new disclosure and documentation requirements for people who provide voting assistance. ROA.24-50826.37680. Section 6.04 amended the Oath of Assistance that assistors must swear when helping with in-person voting or voting by mail. *Id.* at 37681-82. Providing voting assistance without completing the disclosures or the Oath is a state jail felony (with some exceptions) and may result in the rejection of the voter’s ballot. *Id.* This brief refers to sections 6.03, 6.04, 6.05, and 6.07 collectively as the “Assistance Provisions.”¹

Within days of S.B.1’s enactment, voting rights, civil rights, and disability rights organizations filed since-consolidated lawsuits challenging the law. Appellees are organizations that serve Texans, or have members in Texas, who require voting

¹ This brief is limited to sections challenged by The Arc or DST under Section 208.

assistance due to a disability, blindness, or an inability to read or write the language in which the ballot is written. DST and The Arc challenge the Assistance Provisions under Section 208 of the Voting Rights Act. 52 U.S.C. § 10508 (“Section 208”).

STATEMENT OF JURISDICTION

The Court has jurisdiction under 28 U.S.C. §1292.

PROCEDURAL HISTORY

The consolidated cases, concerning many sections of S.B.1, were tried over six weeks in 2023. On September 28, 2024, the District Court entered Findings of Fact and Conclusions of Law on Plaintiffs’ overbreadth, vagueness, and Free Speech Clause challenges to S.B.1 § 7.04, and permanently enjoined that provision. ROA.24-50826.37508 (the “First Order”).² The District Court denied the State Defendants’ motion to stay the First Order; (ROA.24-50826.37616); they then moved this Court to stay the First Order pending appeal. Dkt. No. 6, *LUPE v. Abbott*, No. 24-50783 (5th Cir. Oct. 3, 2024). On October 15, 2024, this Court stayed the First Order. Dkt. No. 112-1, *LUPE v. Abbott*, No. 24-50783 (5th Cir. Oct. 15, 2024).

Meanwhile, on October 11, 2024, the District Court entered Findings of Fact and Conclusions of Law (Claims Under Section 208 of the Voting Rights Act), permanently enjoining S.B.1 §§ 6.03–6.07 and 7.04. ROA.24-50826.37670 (the

² The Arc and DST were not plaintiffs in the action that resulted in the First Order.

“Second Order”). The Second Order is the subject of this appeal. It permanently enjoins the State Defendants and Local DA Defendants from enforcing certain language in the Oath of Assistance under section 6.04, and from enforcing the voter relationship disclosure requirements of sections 6.03, 6.05, and 6.07. ROA.24-50826.37777-80. It prohibits investigation, referral, or prosecution (including civil enforcement) of any alleged violations of the Oath language and the disclosure requirements. *Id.* The Second Order also permanently enjoins the Texas Secretary of State (the “SoS”) and county election officials from using forms that contain the enjoined Oath language or the voter-relationship-disclosure requirement, and requires these Appellants to revise all related forms and training materials accordingly. The District Court stayed the latter portion of the injunction, against the SoS and county election officials, until after the November 2024 election, thereby requiring no changes to the forms, training materials, or administration of the Oath or disclosure requirement during the election. *Id.* at 37777-81. Thus, the only portion of the injunction currently in place is its prohibition of investigation, referral, or prosecution, directed against the State Defendants and Local DA Defendants.

Although the District Court *sua sponte* stayed most of its injunction, State Defendants and Intervenor-Defendants moved to stay the remainder of the injunction pending appeal. ROA.24-50826.37789. On October 18, 2024, before the District Court had ruled on that motion, Appellants sought a stay in this Court, which granted

a temporary administrative stay. Dkt. Nos. 20, 31-2, *LUPE v. Abbott*, No. 24-50926 (5th Cir. Oct. 18, 2024). That same day the District Court issued an administrative stay of its injunction until after the November election. ROA.24-50826.377864. On October 20, 2024, this Court denied the State Defendants’ motion to stay and dissolved the temporary stay it had previously granted, noting that a motion for a stay brought after the November election could be submitted to the merits panel. Dkt. No. 34-2, *LUPE v. Abbott*, No. 24-50826 (5th Cir. Oct. 20, 2024). Appellants then filed the instant motion.

LEGAL STANDARD

In determining whether a stay is warranted, courts must consider “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009). Appellants bear a “heavy burden” in justifying a stay pending appeal. *Patino v. City of Pasadena*, 677 F. App’x 950, 955 (5th Cir. 2017).

ARGUMENT

I. Appellants Are Unlikely to Succeed on the Merits

First, Appellants have not made any “strong showing” of likelihood of success on the merits. *Thomas v. Bryant*, 919 F.3d 298, 303 (5th Cir. 2019), *vacated on other*

grounds Thomas v. Reeves, 961 F.3d 800 (5th Cir. 2020) (en banc). Appellees clearly have standing to challenge the Assistance Provisions, and Section 208’s text, its legislative history, and the weight of authority support the District Court’s conclusion that Appellees have succeeded on the merits of their Section 208 claim.

A. Appellees Have Standing to Bring Section 208 Claims

It is well-established that “one party with standing is sufficient to “satisfy Article III[.]” *Sierra Club v. U.S. EPA*, 939 F.3d 649, 664-65 (5th Cir. 2019). DST and The Arc both proved standing to challenge S.B.1’s Assistance Provisions under Section 208.

DST has organizational standing to challenge sections 6.03–6.05 and 6.07.³ The Assistance Provisions directly regulate DST’s voter assistance activities by requiring DST’s members and volunteers who assist voters to make specified disclosures and swear the prescribed Oath. *See Davis v. Fed. Election Comm’n*, 554 U.S. 724, 733 (2008) (plaintiff directly regulated by challenged rule has standing); *accord Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 382 (2024) (“Government regulations that require or forbid some action by the plaintiff almost invariably satisfy both the injury in fact and causation requirements.”).

³ The Court dismissed DST’s challenge to section 6.01 on standing because DST failed to show it intended to engage in conduct regulated by 6.01. ROA.24-50826.37737-38.

In addition, the Assistor Disclosure and Oath requirements chill DST's ability to provide in-person and mail-ballot assistance thus raising an alternative basis for organizational standing. ROA.24-50826.37687; *id.* at 37743, 743 n.38. This Court's decision in *OCA-Greater Houston* is dispositive. There, the organizational plaintiff challenged a Texas law restricting voters' access to interpretation assistance. Noting that the plaintiff's injury "was not large," this Court nonetheless concluded that the plaintiff had standing because it was required to spend some additional time and effort conducting voter outreach to counteract the negative effects of the law. 867 F.3d at 610, 613. Here, the District Court found that DST has struggled to recruit volunteers to provide voting assistance because of the threat of criminal prosecution in the Assistance Provisions, and that the disclosure requirements burden assistors. ROA.24-50826.37719; *id.* at 37742-43, 742-43 nn.36-37. Regardless of the magnitude of this injury, the challenged provisions "perceptibly impair[]" DST's core activities—which include providing voting assistance—inflicting a cognizable injury that supports DST's standing. *OCA-Greater Houston*, 867 F.3d at 612.

Meanwhile, The Arc established associational standing to challenge section 6.04 through the testimony of four of its members, Texas voters with disabilities who have been unable to vote with their assistor of choice because of the chilling effect of the credible threat of criminal enforcement of the Oath. ROA.24-50826.37687, 703-10; *id.* at 37738-42 (discussing testimony of The Arc's members

Jodi Nunez Landry, Laura Halvorson, Amy Litzinger, and Nancy Crowther). These members satisfy the requirements of Article III standing, their interests in voting are germane to the purposes of The Arc, and their individual participation was not required to seek injunctive relief, fulfilling the associational standing requirements. *Id.* at 37738-42; *see Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 143 S. Ct. 2141, 2157 (2023).

Appellants' scattershot attempts to undermine Appellees' standing all miss their mark. First, Appellants put forward the legal fiction that the SoS and the Texas Attorney General (the "OAG") do not enforce S.B. 1.⁴ But "[t]he facial invalidity of a Texas election statute is, without question, fairly traceable to and redressable by the State itself and its [SoS], who serves as the 'chief election officer of the state.'" *OCA-Greater Houston*, 867 F.3d at 613 (quoting Tex. Elec. Code § 31.001(a)). The District Court's findings demonstrate State Defendants' enthusiastic, ongoing enforcement of the Assistance Provisions. OAG investigated possible violations of the disclosure requirements in 2023, and publicly confirmed its commitment to acting against alleged "assistance fraud." ROA.24-50826.37695-96. Relevant here,

⁴ *La Union Del Pueblo Entero v. Abbott*, 119 F.4th 404, 409 (5th Cir. 2024), this Court's decision staying a separate injunction was premised on *Purcell v. Gonzalez*, 549 U.S. 1, 6 (2006). Post-election, the record of the enforcement activities of the SoS and OAG has been supplemented, including the State Defendants' assertion on this motion that OAG is pursuing investigations and prosecutions under the Assistance Provisions at issue here. *See* Appellants' Stay Mot. 29; Decl. of Geoff Barr, Dkt. No. 72 at 1. Accordingly, the earlier decision is no longer apposite.

Appellants assert that the “Election Integrity Division” of Appellant OAG “is currently pursuing multiple ongoing investigations for potential violations of S.B.1 covered by the district court’s injunction.” Appellants’ Stay Mot. 29.

The District Court’s findings further establish that the “credible threat” of enforcement has injured Appellees by deterring them from seeking or providing voter assistance. For example, the District Court correctly found that DST chapters have struggled to recruit volunteers because potential assistors are unwilling to risk criminal liability under the disclosure and Oath provisions. ROA.24-50826.37742-43, 742 n.36. Plaintiff-Appellees’ fear of prosecution is not speculative. The evidence that Texas has threatened and launched investigations and prosecutions based on the voter assistance provisions shows that the State “will likely react in predictable ways that in turn will likely injure the plaintiffs.” *FDA*, 602 U.S. at 383. Texas’s related argument, that injury caused by the disclosure provisions does not bear a sufficiently close relationship to a common law harm, also fails. *See, e.g., Dep’t of Commerce v. New York*, 588 U.S. 752, 767 (2019) (chilling effect of disclosure requirements is a cognizable injury).

Appellants attempt to defend the Oath with the obvious statement that no witness asserted an intention to “pressure or coerce” a voter into choosing them to provide assistance. Appellants’ Stay Mot. 19, 22-23. Of course not. One need not intend to commit a crime to have a well-founded fear of prosecution by aggressive

government agencies applying a vague statute. *See Harris v. Siegelman*, 695 F. Supp. 517, 525-26 (M.D. Ala. 1988) (finding that a similar oath requirement bred intimidation and fear among low literacy black voters). Appellees’ witnesses testified that their fear of prosecution was magnified by the vague, undefined language—“pressure or coerce”—that an assistor must swear to without knowing how a prosecutor may interpret the phrase. ROA.24-50826.37715-16; *id.* at 37760-62; *see Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (“Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.”).

Finally, Appellants assert that the Oath has been subject to penalty of perjury since 1974, so it cannot now cause fear of prosecution. Appellants’ Stay Mot. 23. Appellants fail to recognize that the penalty of perjury interacts with the vague new language in the Oath to deter voters and assistors. ROA.24-50826.37711-12.

B. Section 208 Preempts the Assistance Provisions

Section 208 provides that “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508. Section 208 specifically targeted state laws, including those of Texas, that functioned as literacy tests, forfeiting the right to vote of people who were unable to read or write by

denying them assistance. *See* Sen. Rep. 97-417, at 63-64; *Garza*, 320 F. Supp. at 132. Section 208 grants no authority to states to add further limitations or restrictions beyond those stated in its text. *See OCA-Greater Houston*, 867 F.3d at 615.

“State laws are preempted when they conflict with federal law” including “where the challenged state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress[.]’” *Arizona v. United States*, 567 U.S. 387, 399 (2012) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). Accordingly, a state law is preempted when it “creates a conflict with the plan Congress put in place,” *id.* at 403, or “interferes with and frustrates the substantive right Congress created.” *Felder v. Casey*, 487 U.S. 131, 151 (1988). State laws that “limit[] voter choice” are preempted by Section 208 because they “impermissibly narrow[] the right guaranteed by Section 208.” *OCA-Greater Hous.*, 867 F.3d at 615 (invalidating Texas requirement that an interpreter chosen by the voter must be registered in the same county as the voter).

The State argued in *OCA-Greater Houston* that its strictures on interpreters did not violate Section 208 because they applied only to assistance with “the literal act of marking the ballot.” 867 F.3d at 615. Based on the broad definition of “voting” in the VRA, however, this Court held that Section 208 precluded the State’s restrictions on interpreters. *Id.* Appellants now seek to argue that *OCA-Greater Houston* did not ban regulations on voter assistance and that its sole holding was the

definition of the phrase “to vote.” Appellants’ Stay Mot. 26. In fact, defining “to vote” was a step in the reasoning that supported this Court’s holding that Section 208 preempted the Texas law at issue.

The District Court concluded that Congress intended with Section 208 – as evinced by its plain text and legislative history – to guarantee the right of voters who need assistance to the assistor of their choice. The Assistance Provisions frustrate that right and are accordingly preempted. ROA.24-50826.37756-65.

The Senate Report provides a “‘clear statement’ of [congressional] intent to preempt certain state laws that would contravene (*or unduly burden*) a § 208 voter’s right to receive assistance from a person of the voter’s choice.” *Ala. State Conf. of NAACP v. Marshall* (“*Ala. NAACP*”), No. 2:24-cv-00420, 2024 WL 4448841, at *4 (N.D. Ala. Oct. 4, 2024) (emphasis added); *accord Garza*, 320 F. Supp. at 136 (W.D. Tex. 1970) (state law prohibiting assistance for illiterate voters functionally denied those individuals’ “fundamental right to vote”) (decision cited in Senate Report). Thus, “any law that limits a § 208 voter’s choice or provides additional exceptions to this right unduly burdens the rights of § 208 voters, and is, as a matter of law, in conflict with § 208.” *Ala. NAACP*, 2024 WL 4448841, at *3; *Ark. United*, 2020 WL 6472651, at *4 (“[T]here is nothing in the statutory language to suggest that a state may burden, unduly or otherwise, the right articulated in § 208.”). Appellants’ argument that that Section 208 preempts state laws “only to the extent that they

unduly burden the right recognized in [Section 208], with that determination being a practical one dependent upon facts,” Appellants’ Stay Mot. 27, is therefore a misreading of the Senate Report.

The District Court’s factual analysis demonstrates the burdens that the Assistance Provisions impose on voters’ rights to assistors of their choice. At trial, voters and assistors testified to fears about swearing under penalty of perjury to vague language and about attesting to a voter’s eligibility to receive assistance. The District Court found that these fears caused witnesses to refrain from seeking or providing voter assistance. ROA.24-50826.37710-16. Appellants’ claims that assistors simply prefer not to comply with the state rule, and that concerns that the Oath has a chilling effect are speculative, Appellants’ Stay Mot. 27-28, mischaracterize the record.

Appellants also claim that the Oath furthers the aims of Section 208 by ensuring that voters who need assistance are not coerced. *Id.* The District Court’s findings show instead that the Oath deprives such voters of assistance. ROA.24-50826.37710-16. Congress made the determination, moreover, that the way to guard against improper influence is to protect the voter’s unencumbered choice of assistor, *not* to place restrictions on the voter’s choice. *See* S. Rep. No. 97-417, at 62 (1982) (“[T]he only way to assure meaningful voting assistance and to avoid possible

intimidation or manipulation of the voter” is to permit voters “to have the assistance of a person of their own choice.”); *accord Ala. NAACP*, 2024 WL 4448841, at *4.

Appellants deploy a theoretical account of how the Assistor Disclosure requirements in sections 6.03, 6.04, and 6.07 might operate and argue that the requirements are consistent with the State’s prerogative to regulate elections and are “designed to protect the rights of voters.” Appellants’ Stay Mot. 9-13, 27. Appellants do not meaningfully engage with the District Court’s detailed findings that the disclosure requirements, and the corresponding threat of prosecution, discourage people from assisting voters and prevent voters from using the assistor of their choice. ROA.24-50826.37719-20; *id.* at 37742 n.36. The disclosure provisions make it harder for people with disabilities to vote and thus frustrate Congress’s purpose to protect voters with Section 208.

Appellants also argue that Section 208 permits states to regulate voter assistance because the statute accords the right to “a person of the voter’s choice” and not “the person” or “any person.” Courts have rejected this argument. *See Disability Rts. N.C. v. N.C. State Bd. of Elections*, 602 F. Supp. 3d 872, 878 (E.D.N.C. 2022) (“[U]se of the indefinite article ‘a’ does not show intent by Congress to allow states to restrict a federally created right.”); *Ark. United v. Thurston*, 2020 WL 6472651, at *4 (W.D. Ark. Nov. 3, 2020) (same). “In common terms, when ‘a’ or ‘an’ is followed by a restrictive clause or modifier, this typically

signals that the article is being used as a synonym for either ‘any’ or ‘one.’” *United States v. Alabama*, 778 F.3d 926, 932 (11th Cir. 2015) (cleaned up). If a state may limit who qualifies as “a person” under Section 208, then the “phrase ‘of the voter’s choice’ is either superfluous or loses all meaning.” *League of Women Voters v. LaRose*, 2024 WL 3495332, at *11 (N.D. Ohio July 22, 2024).

Appellants also assert that the Court should presume that Texas’s police powers were not superseded by Section 208 “unless that was the clear and manifest purpose of Congress.” Appellants’ Stay Mot. 24. Putting aside whether a presumption against preemption, rooted in the 67-year-old case of *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947), applies to conflict preemption,⁵ Congress expressed a “clear and manifest purpose” to displace state laws governing voting assistance by “prescribing minimal requirements” that apply “to the manner in which voters may choose to receive assistance.” S. Rep. No. 97-417, at 63.

Ignoring Congress’s clear intent, Appellants insist that the State has a legitimate interest in regulating voting assistance, and that its electoral procedures are owed “considerable deference” even if they impose burdens on voting assistance

⁵ The Supreme Court applies the presumption against preemption only occasionally. See e.g., *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472 (2013) (discussing preemption without mentioning any presumption); *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625 (2012) (similar). See also Charles W. Tyler & Heather K. Gerken, *The Myth of the Laboratories of Democracy*, 122 *Colum. L. Rev.* 2187, 2240 (2022) (discussing inconsistency in the Court’s use of a presumption).

not found in Section 208. Appellants’ Stay Mot. 23-24. Appellants pluck this deference language from *Vote.Org v. Callanen*, a case that did not address Section 208 or preemption. 89 F.4th 459, 481 (5th Cir. 2023).⁶ Appellants “fail to cite any authority carving out an exception to the Supremacy Clause when a state has a compelling interest in enacting a statute that conflicts with federal law.” *Ark. United v. Thurston*, 626 F. Supp. 3d 1064, 1086 (W.D. Ark. 2022). There is no support for importing a deference analysis into the Section 208 context.

Finally, Appellants’ argument that the limitations in the text of Section 208—that the assistor cannot be the voter’s employer or union officer—do not place “a floor prohibiting any State regulation” of the Section 208 right, Appellants’ Stay Mot. 26, contravenes the fundamental principle of statutory interpretation that “[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.” *Hillman v. Maretta*, 569 U.S. 483, 496 (2013). Congress was not concerned with reining in voting-assistance choice. Instead, the Senate Report shows congressional desire to “extend this right to blind, disabled and illiterate citizens in all states” by mandating that voters “be permitted to have the assistance of a person

⁶ *Vote.Org* concerns challenges to the Materiality Provision of the Civil Rights Act of 1964 to Texas’ wet signature requirement for voter registration applications. Unlike Section 208, the Materiality Provision is premised on courts owing “considerable deference” to state legislative judgments determining the qualifications for voting. 89 F.4th at 480-81. *Vote.Org* does not address whether the Materiality Provision preempts state laws.

of their own choice” to ensure they receive assistance that would “make [their vote] fully meaningful.” S. Rep. No. 97-417 at 62, 63 (1982).

Accordingly, Appellants’ argument that they are likely to succeed on the merits of their appeal should be rejected.

II. Denial of a Stay Will Not Irreparably Injure Appellants

No injury can flow from an order requiring the State of Texas to comply with federal law. *See United States v. Texas*, No. 1:24-CV-8-DAE, 2024 WL 861526 at 41 (W.D. Tex. Feb. 29, 2024); *see also United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) (finding no harm from nonenforcement of invalid legislation).

Appellants’ claimed interest in uniform election laws is undermined by S.B.1 itself: sections 6.03-6.05 and 6.07 “interfere[]” with the ability of blind, disabled, and low-literacy Texans “to vote with help from their chosen assistors.” ROA.24-50826.37770. S.B.1, not the injunction, imposes differential burdens on certain voters. The undue and disparate burden on Section 208 voters cannot further an interest in clear and uniform election law.

That the injunction may apply to some DAs and not others, *see* Appellants’ Stay Mot. 30, does not change this analysis. A state’s interest in uniform enforcement of an invalid state law cannot trump federal law. The injunction, moreover, prohibits SoS from referring, and OAG from investigating, referring to DAs, or prosecuting, any potential violation of sections 6.03-6.05 or 6.07, prohibits

the State, through local prosecutors, from investigating or prosecuting alleged violations, and prohibits local prosecutors from deputizing or appointing OAG, or seeking OAG's appointment *pro tem* by a Texas district judge, to prosecute alleged violations. All local jurisdictions are restricted by the injunction and should refrain from enforcing those sections declared to be invalid.

III. A Stay Will Substantially Injure Appellees

By contrast, “[d]enial of the right to choose their assistors would work irreparable harm on these disabled, blind, and illiterate voters who have a greater need for assistance than other voters.” *Ala. NAACP*, 2024 WL 4448841, at *4. Here, “the injury [Plaintiffs] seek to prevent—holding an election under an unlawful plan with discriminatory effects [on Section 208 voters]—is . . . , it should go without saying, a serious one.” *Thomas v. Bryant*, 919 F.3d 298, 303-04 (5th Cir. 2019); *cf. Veasey v. Abbott*, 830 F.3d 216, 270 (5th Cir. 2016) (en banc) (“[i]t would be untenable” to permit a discriminatory law to “remain in operation for [an upcoming] election”).

Thus, the District Court correctly held that the “failure to grant the requested injunction will result in irreparable injury to Appellees and their members by interfering with voters’ rights and ability to vote with help from their chosen assistors.” ROA.24-50826.37772. The threat of prosecution under the Assistance Provisions causes “voters, including some of Appellees’ members, [to forgo]

assistance to which they are lawfully entitled and will continue to do so as long as those provisions remain in effect.” *Id.* Should this Court stay the injunction, these voters, and others, will continue to go without voting assistance, suffering an irreparable injury to their fundamental voting rights. *Id.*; see *Ala. State Conf. of NAACP v. Attorney General*, 2024 WL 4481489 (11th Cir. Oct. 11, 2024) (“[T]he issuance of a stay would injure the plaintiffs (and other Section 208 voters).”). Disabled voters voting without trusted assistance often must experience physical pain, embarrassment, or loss of privacy because they must then vote without assistance or with the assistance of an election official. ROA.24-50826.37705-12. Accepting these hardships should not be a requirement to exercise their right to vote. See *League of Women Voters v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“Courts routinely deem restrictions on fundamental voting rights irreparable injury.”).

If the injunction is stayed, moreover, Appellees will miss opportunities to assist voters that will be permanently lost. See *League of Women Voters v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (finding irreparable harm where policies “ma[d]e it more difficult for [plaintiff organizations] to accomplish their primary mission of registering voters”). Indeed, “organizations with core voter-advocacy missions,” such as The Arc and DST, “are irreparably harmed when the defendant’s actions perceptibly impair the organization’s programs, making it more difficult to carry out

its mission.” *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158 (M.D.N.C. 2020) (cleaned up).

Appellants argue against their own motion when they observe that several elections have already taken place under S.B.1 and claim that a stay is needed to maintain the “status quo that has existed since September 7, 2021.” Appellants’ Stay Mot 32. This argument weighs heavily in favor of denying the stay: Appellees have already endured multiple elections under Assistance Provisions that violate the Voting Rights Act. Enough is enough.

IV. A Stay Harms the Public Interest

The public interest is harmed when state officials are permitted to enforce an election law that violates federal law. *Ingebretsen ex rel. Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996) (injunction preventing state officials from enforcing an unconstitutional law serves the public interest); *Texas Democratic Party v. Benkiser*, 459 F.3d 582, 595 (5th Cir. 2006) (the public interest is in “the correct and constitutional application of Texas’s duly-enacted election laws”); *Ala. State Conf. of NAACP*, 2024 WL 4481489 (“the public interest does not weigh in favor of a stay” in a case involving claims under Section 208). More than three million voting-eligible Texans have disabilities, and people with disabilities vote at a lower rate than those without disabilities. ROA.24-50826.34144, 146. It is in the public interest to ensure the right to vote of every eligible Texas voter who is blind,

disabled, or unable to read or write, and it is in the public interest to eliminate barriers that keep those voters from obtaining assistance. *See OCA-Greater Houston v. Texas*, 2016 WL 4597636 (W.D. Tex. Sept. 2, 2016) (the public interest is served by ensuring that “all Texas voters receive the right to assistance in voting provided by Section 208 of the VRA”). The District Court concluded that “permitting the State Defendants and local prosecutors to continue to threaten criminal enforcement is unlikely to serve the public interest.” ROA.24-50826.37779.

Consistent with the public interest, the Court’s “focus always must be on prevention of injury by a proper order, not merely on preservation of the status quo.” *See Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 2018). A stay would stifle political participation and compound the harm to Section 208 voters, their assistors, and Appellees, and would therefore harm the public interest. As with all other factors, the public interest weighs heavily against a stay.

CONCLUSION

Appellants’ Motion to Stay should be denied.

Dated this 25th day of November, 2024.

Respectfully submitted,

/s/ Victor Genecin

Victor Genecin

CERTIFICATE OF SERVICE

On November 25, 2024, this document was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

/s/ _____
Victor Genecin

CERTIFICATE OF COMPLIANCE

This motion complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 4986 words, excluding the parts of the motion exempted by rule; and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Times New Roman) using Microsoft Word (the same program used to calculate the word count).

/s/ _____
Victor Genecin